Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:CORP:01
PLR-116684-11

Date:
June 21, 2011

Legend:

Taxpayer =

Parent =

LLC 1 =

LLC 2 =

LLC 3 =

LLC 4 =

REIT =

a =

b =

Date 1 =

Year 1 =

Year 2 =

State A =

Company Official =

Tax Professional 1 =

Tax Professional 2 =

Dear :

This letter responds to a letter dated April 11, 2011, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. Additional information was submitted in letters dated May 31, 2011 and June 17, 2011. The extension is being requested in order to allow Taxpayer and Parent to file an election under § 362(e)(2)(C) with respect to the Year 1 Transfer (as defined below) (the "Election"). The material information is summarized below.

Taxpayer is a State A business trust that is treated as a partnership for federal income tax purposes. Taxpayer wholly and directly owns Parent, a State A corporation and the common parent of a U.S. affiliated group that files a consolidated federal income tax return. Parent directly owns all common interests in LLC 1, which owns a% of all interests in LLC 2 (Parent owns the remaining b%). Each of LLC 1 and LLC 2 is a State A limited liability company treated as a partnership for federal income tax purposes.

Immediately before Date 1, Taxpayer also directly owned all interests in LLC 3, a State A limited liability company treated as a disregarded entity for federal income tax purposes. LLC 3 directly owned all common interests in LLC 4, a State A limited liability company treated as a partnership for federal income tax purposes, which directly owned all the common stock in REIT, a State A corporation treated as a real estate investment trust within the meaning of § 856(c)(1).

On Date 1, Taxpayer contributed its LLC 3 ownership interests to Parent in a transaction intended to qualify as a non-taxable transfer under § 351 (the "Year 1 Transfer"). Taxpayer's basis in its LLC 4 partnership interests, and LLC 4's basis in its REIT stock, exceeded the fair market value of the partnership interests and stock, respectively, immediately before the Year 1 Transfer. In Year 2, REIT sold substantially all of its assets, ceased to qualify as a real estate investment trust (thus becoming taxable as a regular C corporation), and converted to a limited liability company in a transaction treated as a taxable liquidation under § 331. Taxpayer has submitted information establishing that these Year 2 transactions were completed or contemplated before the due date for the Election.

Section 362(e)(2)(A) generally provides that if property is transferred to a corporation as a capital contribution or in an exchange to which § 351 applies and the aggregate basis of the transferred property exceeds its aggregate value immediately after the transaction, then the transferee corporation's basis in such property shall not exceed the fair market value of such property. Under § 362(e)(2)(C), however, the transferor and transferee can make a joint election to reduce the transferor's basis in the stock received to its fair market value, and no reduction of the transferee's basis in the property received will be required. Section 362(e)(2)(C) provides that the Election shall be made at such time and in such form and manner as the Secretary may prescribe and, once made, shall be irrevocable. Notice 2005-70, 2005-2 C.B. 694, which provides guidance on how to make the Election, generally provides that the transferor may make a valid election by including the certification described therein on or with its tax return filed by the due date (including extensions) for filing its original return for the taxable year in which the transaction occurred.

The Election was required to be filed on or with Taxpayer's timely filed income tax return for Year 1. For various reasons, however, Taxpayer failed to file the Election in a timely manner.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement. Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election (§ 301.9100-1(a)). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the

taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by Notice 2005-70. Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time to file the Election, provided Taxpayer and Parent acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the government.

Information, affidavits, and representations submitted by Taxpayer, Company Official, and Tax Professionals 1 and 2 explain the circumstances that resulted in the failure to timely file the Election. The information establishes that the request for relief was filed before the IRS discovered the failure to make the Election and that the interests of the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(1)(i). Taxpayer and Parent also have represented that they do not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 at the time they requested relief (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3)) and the new position requires or permits a regulatory election for which relief is requested. See § 301.9100-3(b)(3)(i).

Based on the facts and information submitted, including the affidavits submitted and the representations made, we conclude that Taxpayer and Parent acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3 until 45 days from the date on this letter to file the Election.

This extension of time is conditioned on the tax liability (if any) of Taxpayer, the Parent consolidated group, LLC 1, LLC 2, LLC 4, and REIT being not lower, in the aggregate, for all years to which the Election applies than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the federal income tax returns involved.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction discussed in this letter. Specifically, no opinion is expressed as to whether the transaction is described in § 351, nor is any opinion expressed concerning the basis or fair market value of any asset. In addition, we express no opinion as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the Election late that are not specifically set forth in the above ruling.

For purposes of granting relief under § 301.9100-3, we have relied on certain statements and representations that Taxpayer, Company Official, and Tax Professionals 1 and 2 made under penalties of perjury. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable still apply.

The letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: